DISTRICT OF COLUMBIA

STATEHOOD CONSTITUTIIONAL CONVENTION

Thursday, May 6, 1982
6:17 o'clock p.m.

Auditorium, 9th Floor
929 E Street, N.W.
Washington, D.C.

Presiding Officers:

James Baldwin, Chairman
Janette Harris, Second Vice President
William Cooper, Secretary

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PROCEEDINGS

CHAIRMAN BALDWIN: President Cassell has informed me that he will not be present tonight. Therefore, the First Vice President will preside.

We know we don't have a quorum. But what we'll do now is to start the question and answer period. We will check the roll every five minutes, and when 23 people are present, we will then announce that we are in official business.

[At the request of the First Vice President, the question and answer session was recorded but not transcribed. The session officially began at 6:27 p.m.]

CHAIRMAN BALDWIN: A quorum has been established. We will observe a silent session of prayer, please. [Pause for silent meditation]

Mr. Secretary, will you call the roll.

SECRETARY COOPER: Delegate Baldwin.

CHAIRMAN BALDWIN: Here.

SECRETARY COOPER: Delegate Barnes.

DELEGATE BARNES: Here.

SECRETARY COOPER: Delegate Blount.

DELEGATE BLOUNT: Present.

SECRETARY COOPER: Delegate Bruning.

DELEGATE BRUNING: Here.

SECRETARY COOPER: Delegate Cassell. [No response]

Delegate Clarke. [No response]

Delegate Coates. [No response]

Delegate Cooper. Present.

Delegate Corn.

DELEGATE CORN: Here.

SECRETARY COOPER: Delegate Croft. [No response]

Delegate Eichhorn. [No response]

Delegate Feely. [No response]

Delegate Freeman. [No response]

Delegate Garner.

DELEGATE GARNER: Here.

SECRETARY COOPER: Delegate Graham.

DELEGATE GRAHAM: Here.

SECRETARY COOPER: Delegate Harris.

DELEGATE HARRIS: Here.

SECRETARY COOPER: Delegate Holmes. [No response]

Delegate Jackson.

DELEGATE JACKSON: Present.

SECRETARY COOPER: Delegate Johnson.

DELEGATE JOHNSON: Present.

SECRETARY COOPER: Delegate Jones.

DELEGATE JONES: Present.

SECRETARY COOPER: Delegate Jordan.

DELEGATE JORDAN: Here.

SECRETARY COOPER: Delegate Kameny.

DELEGATE KAMENY: Here.

SECRETARY COOPER: Delegate Lockridge. [No response]

Delegate Long. [No response]

Delegate Love. [No response]

Delegate Maguire.

DELEGATE MAGUIRE: Here.

SECRETARY COOPER: Delegate Marcus.

DELEGATE MARCUS: Good evening.

SECRETARY COOPER: Delegate Charles Mason.

DELEGATE C. MASON: Here.

SECRETARY COOPER: Delegate Hilda Mason. [No response]

SECRETARY COOPER: Delegate Brian Moore.

DELEGATE B. MOORE: Present.

SECRETARY COOPER: Delegate Jerry Moore. [No response]

Delegate Talmadge Moore. [No response]

Delegate Nahikian.

DELEGATE NAHIKIAN: Here.

SECRETARY COOPER: Delegate Nixon.

DELEGATE NIXON: Here.

SECRETARY COOPER: Delegate Oulahan.

DELEGATE OULAHAN: Here.

SECRETARY COOPER: Delegate Paramore. [No response]

Delegate Robinson. [No response]

Delegate Rothschild.

DELEGATE ROTHSCHILD: Here.

SECRETARY COOPER: Delegate Schrag.

DELEGATE SCHRAG: Here.

SECRETARY COOPER: Delegate Shelton. [No response]

Delegate Simmons. [No response]

Delegate Street.

DELEGATE STREET: Here.

SECRETARY COOPER: Delegate Terrell. [No response]

Delegate Thomas. [No response]

Delegate Warren. [No response]

Mr. President, 24 delegates are present.

CHAIRMAN BALDWIN: Thank you, Mr. Secretary.

The chairperson of suffrage. As the chair understands, Mrs. Johnson, we are on the article on apportionment, section B. That's where we'll begin tonight.

DELEGATE JOHNSON: Thank you, Delegate Baldwin. If the delegates would turn to page 3 of 3, the article on apportionment, I move the adoption of section 3(b).

A DELEGATE: Second.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we adopt section 3(b) of the article on apportionment.

DELEGATE ROTHSCHILD: Wait, we didn't do (a). Did we adopt (a)?

CHAIRMAN BALDWIN: Mr. Rothschild, we did (a), and it was adopted. The chair began by making that observation.

Are you ready for discussion on section 3(b)?

Delegate Johnson.

DELEGATE JOHNSON: I would like to suggest to the delegates in reading this over we found that there has perhaps been a word left out, and I'd like to reread the way that we'd like for it to be.

CHAIRMAN BALDWIN: Okay.

DELEGATE JOHNSON: In addition to establishing the legislative districts pursuant to subsection (a) of this section, comma, the commission is authorized to establish any districts required for the members of the United States House of Representatives representing this state, to

establish appropriate single-member districts for any other elective office, comma, and to participate in joint federal and state preparations for the decennial census.

CHAIRMAN BALDWIN: Does everyone have the additions to section (b)? Delegate Kameny.

DELEGATE KAMENY: May I ask why you made one small change in language?

DELEGATE JOHNSON: Because it seemed as though there was a word left out. In addition to establishing...

DELEGATE KAMENY: You changed "shall establish" to "is authorized to establish," if I understand, which means they are authorized to, but they don't have to really.

CHAIRMAN BALDWIN: Delegate Johnson, that is a substantive change. Did you check your committee, have a majority of them concur in it?

DELEGATE JOHNSON: No. No.

CHAIRMAN BALDWIN: That should be done.

DELEGATE KAMENY: I am merely inquiring. I'm not trying to make a fuss about it.

DELEGATE JOHNSON: Since we did not do that, let's leave it as it is written in our official document.

CHAIRMAN BALDWIN: Thank you.

DELEGATE JOHNSON: We'll leave it as it is, as you

have it written.

CHAIRMAN BALDWIN: Any further discussion on section 3(b)? Is there any further discussion on section 3(b)? Having heard none, we are ready for the vote.

All in favor of adopting section 3(b) of the article on apportionment, signify by saying, "Yes." [Response]

Opposed is "Nay." [Silence]

Abstention? [No abstentions]

Section 3(b) is adopted.

DELEGATE ROTHSCHILD: Point of order.

CHAIRMAN BALDWIN: State your point of order, please.

DELEGATE ROTHSCHILD: Mr. Chairman, I would like to go on record and say that we have not adopted section 3(a) of the apportionment section.

CHAIRMAN BALDWIN: That is not a point of order. Our minutes reflect that we have and did in fact adopt it, and the rest of the delegates understand that we adopted it. So, thank you for your observation. We did adopt section 3(a), Delegate Rothschild.

Delegate Johnson, will you proceed with section 3(c).

DELEGATE JOHNSON: Yes. I move the adoption of

section 3(c) of our article on apportionment.

SEVERAL DELEGATES: Second.

CHAIRMAN BALDWIN: The secretary would like to get the vote on section 3(b). He needs the numbers. It was carried. It was voice vote and it was carried. It was unanimous. There was no objection. He has it now.

It has been moved and properly seconded that we adopt section 3(c). Are you ready for the discussion? Is there a minority report?

DELEGATE B. MOORE: No, sir.

CHAIRMAN BALDWIN: No minority report. Any amendments to section 3(c)? Any discussion to section 3(c)? Having heard none, we are ready to vote. Those in favor of adopting section 3(c), signify by saying, "Yes." [Response]

Opposed is "Nay." [Silence]

Abstentions? [No abstentions]

Section 3(c) has been adopted.

DELEGATE CORN: Point of information, please.

CHAIRMAN BALDWIN: Yes, Delegate Corn.

DELEGATE CORN: I'm sorry to interrupt like this. However, I'm the only one who's making the official transcript of this to go to style and drafting. I must ask you: Were there any changes in 3(b)?

CHAIRMAN BALDWIN: No, none at all.

DELEGATE CORN: And the only one in 3(a) was the Schrag amendment last night?

CHAIRMAN BALDWIN: Yes.

DELEGATE CORN: Okay, fine. Thank you very much.

CHAIRMAN BALDWIN: The secretary has the official record in the future.

DELEGATE CORN: Cooper?

CHAIRMAN BALDWIN: Yes.

DELEGATE CORN: Well, you don't turn it in every night.

CHAIRMAN BALDWIN: That's okay. He has the official record for the convention.

Delegate Johnson, you may proceed.

DELEGATE JOHNSON: Yes. I move therefore, Delegate Baldwin, that we adopt the article on apportionment as amended.

SEVERAL DELEGATES: Second.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we adopt the article on apportionment as amended. Those in favor, say, "Yes." [Response]

Opposed is "Nay." [Silence]

Abstentions?

DELEGATE CORN: Abstain.

CHAIRMAN BALDWIN: One abstention.

The article on apportionment has been adopted.

Delegate Johnson.

DELEGATE JOHNSON: The next article for consideration is the article on initiative and referendum. Section 1, right to Initiative and Referendum: The legislative power of this state shall be vested in the legislature, but the people reserve to themselves the power to propose laws and amendments to the constitution and to adopt or repeal the same, at the polls independent of the legislature, and also reserve the power, at their own option, to so adopt or repeal any act, or part of any act, passed by the legislature and enacted into law.

Section 2, Initiative Procedures:

(a) The initiative is the power of the electors to propose statutes and amendments to the constitution and to adopt or reject them.

(b) An initiative measure may be proposed by presenting to the secretary of state a petition that sets forth the text of the proposed statute or amendment to the constitution.

Section (c). A proposed law or amendment to the constitution shall embrace a single subject and related

matters.

(d) The secretary of state shall submit the measure immediately to the attorney general who shall be responsible for providing to the proponents of the measure, within 20 calendar days, an advisory opinion on (1) the clarity of the measure's language and on (2) whether this measure meets the requirements of this article for placement on the ballot.

(e) The proponents of the measures shall then resubmit the proposal, revised or unchanged, to the secretary of state who shall, within 20 calendar days, prepare an accurate title and summary statement of the measure for use on the petition form.

(f) Upon the receipt of petitions signed by qualified electors equal in number to five percent in the case of a statute, and ten percent in the case of an amendment to the constitution, of the votes for all candidates for governor at the last gubernatorial election, provided that the respective percentages for each type of initiative must have been met in at least two-thirds of the legislative districts of the state, the secretary of state shall submit the measure at the next election held at least 120 days after it qualifies.

(g) The circulation period for an initiative measure petition shall be 180 days after the proponents receive a title and summary from the secretary of state.

Section 3, Referendum Procedures:

(a) The referendum is the power of the voters to approve or reject statutes or parts of statutes.

(b) A referendum may be proposed by a registered voter by presenting to the secretary of state, within 90 days after the statute which is the subject of the referendum becomes a law, a petition signed by registered voters in number not less than five percent of the statewide vote cast for all candidates for governor at the most recent gubernatorial election, asking that the statute or part of it, be submitted to the voters, provided that the signature percentage requirement shall have been met in at least two-thirds of the legislative districts of the state.

(c) The secretary of state, upon verification of the petition signatures, shall submit the measure with respect to which the referendum petition was filed to the voters for approval or disapproval at the next election held at least 60 days after the verification that the petition meets the foregoing requirements. The governor may call a special statewide election for consideration of the measure by the voters.

Section 4, Procedures for Legislation Taking Effect:

(a) An initiative measure approved by a majority of the votes thereon takes effect 30 days after the date of the official declaration of the vote by the secretary of state unless the measures provide otherwise. The result of a referendum election takes effect immediately after the official declaration of the vote by the secretary of state.

(b) No law passed by the legislature shall take effect earlier than 90 days after it has become a law except laws declared to be emergency laws and laws which may not be made the subject of a referendum petition as herein provided. A declared to be an emergency law shall contain a preamble setting forth the facts constituting the emergency and shall contain a statement that such law is necessary for the immediate preservation of the public peace, health, safety, or convenience. A separate vote, which shall be recorded, shall be taken on the preamble, and unless the preamble is adopted by two-thirds of the members of the legislature voting thereon, the law shall not be an emergency law.

(c) No law or part thereof that relates to the appointment, qualification, tenure, removal, or compensation of judges; or to the powers, creation, or abolition of courts; or that appropriates money for the current or

ordinary expenses of the state or for any of its departments, boards, or commissions or institutions shall be the subject of a referendum petition.

However, an appropriation for a capital project may be the subject of a referendum.

(d) Except in the case of an emergency law, the timely filling of a referendum petition shall suspend the operation of the law which is the subject of the referendum. A majority affirmative vote on the measure in the election shall put the statute into effect and a negative vote shall render it null and void.

An emergency law remains in effect unless there is a majority vote against the law, in which case it shall become null and void.

(e) If provisions of two or more initiatives approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail.

(f) The legislature may amend an initiative statute during a two-year period following its enactment only by a three-fourths majority vote of the legislators present and voting. Repeal of an initiative by another statute shall become effective only when approved by the electors unless the initiative statute permits repeal without their approval.

Section 5, Publicity:

The legislature shall provide methods of publicizing all initiative or referendum measures referred to the voters with statements for and against the measures so referred. The secretary of state shall undertake distribution of the measures to ensure that voters shall have an opportunity to study the measure prior to the election.

Section 6, Limit on Initiatives:

The initiative shall not be used for the appropriation of money other than of new revenues created and provided for thereby, to define the jurisdiction of courts or prescribe their rules, or diminish the rights and protections of citizens as enumerated in Article blank of this constitution.

Section 7, Local Exercise of Initiative and Referendum:

Initiative and referendum powers may be exercised by the electors of local governments as provided by law.

Section 8, Enabling Legislation:

This article is self-executing, but enabling legislation may be enacted by the legislature as required.

I have finished the reading of the article on initiative and referendum. Following this article in your

packet is our rationale for the various sections. And Delegate Bruning is our committee expert on this section. So, he will answer questions. I move the adoption--

CHAIRMAN BALDWIN: Not at this point. This is a ten-minute question-and-answer session on the article initiative and referendum, ten minutes question and answer.

Delegate Kameny.

DELEGATE KAMENY: Yes. In your section on the limit on initatives where you prohibit the use of an initiative for diminishing rights and protections of citizens as enumerated in what I assume is going to be the article on rights of the constitution, two separate but related questions. First, why do you not expand that to include initiatives which might diminish rights which are provided by law, which may not necessarily be of constitutional stature? And, given that question, why would you not also include a similar protection of the rights of citizens in the referendum section?

CHAIRMAN BALDWIN: Delegate Bruning, are you going to respond to Delegate Kameny's question?

DELEGATE BRUNING: Yes. I don't think that the under the provision by law was considered. I guess we were thinking largely that the section of the constitution would

apply to appropriate sections in the constitution. And essentially that was a referencing back.

DELEGATE KAMENY: There may well be a good bit of legislation of various kinds that provide rights which are important.

DELEGATE BRUNING: I understand your concern.

DELEGATE KAMENY: And if that is so, I'm assuming that you might want to protect such legislation against referendum as well.

DELEGATE BRUNING: That may be an amendable part. And rights in referendum...

CHAIRMAN BALDWIN: Delegate Corn.

DELEGATE CORN: Yes. One question. On page 2, line 17 and line 21, I just want to get this for clarity. Do you mean the initiative is only for statutes and amendments to the constitution or also for laws?

DELEGATE BRUNING: Statutes is laws.

DELEGATE KAMENY: A statute is a law.

DELEGATE CORN: Statutes, amendments--so, you mean, statutes, comma, and amendments to the constitution?

DELEGATE BRUNING: No, I mean exactly as it's written--statutes and amendments to the constitution.

DELEGATE CORN: Are you talking about two things

there or three?

DELEGATE BRUNING: Two. Statutes and the other is amendments to the constitution.

DELEGATE STREET: Line 66, the last word you made "voters" instead of "votes." It's a typographical error.

CHAIRMAN BALDWIN: Delegate Maguire.

DELEGATE MAGUIRE: I was wondering why did your committee go on define what emergency law is?

DELEGATE BRUNING: We felt that if emergency law just stood there without any type of attempt at definition, process of definition, that it would be an open-ended question in which the legislature could come up with any rationale in any procedure.

DELEGATE MAGUIRE: Did you know that the legislature committee has dealt with emergency law?

DELEGATE BRUNING: No, I didn't know that. Both Ohio and Massachusetts have exactly the same type of definition.

DELEGATE MAGUIRE: In the section for initiative and referendum?

DELEGATE BRUNING: In initiative and referendum they specifically go through a whole process of defining it.

CHAIRMAN BALDWIN: Delegate Rothschild.

DELEGATE ROTHSCHILD: Yes. In the referendum, for the collection of signatures, they must have all the signatures by the 90-day period or else the referendum is void?

DELEGATE BRUNING: That's correct.

DELEGATE ROTHSCHILD: What was the reasoning behind that?

DELEGATE BRUNING: Essentially you don't want to drag the law out, the process out. You want to know if a law is being subject to a referendum or not. And we think that 90 days is probably a reasonable time period, given the amount of signatures we're talking about. Essentially the law will not go into effect for those 90 days. So, in effect, that 90-day period allows you to file a referendum that freezes it without ever going into effect until the voters actually have a chance to vote on it. So, the 90 days and the 90 days till the legislation is going into effect coincide. In that way you don't run into the possibility of having the law go into effect and then have a referendum filed which freezes it and takes it out of effect, and then you vote later on. This is a very orderly process. The 90 days match up.

DELEGATE ROTHSCHILD: Do other jurisdictions have that short a period of time too?

DELEGATE BRUNING: Yes. As a matter of fact, a number of states have 90 days after adjournment of the legislature. But that to me would seem to open the possibility that the law could have been passed, at least in our case, at the beginning of the legislature, let us say, and then gone into effect and then be dealt with. In other words, it still could be running before we even get a chance for a referendum on it.

CHAIRMAN BALDWIN: Delegate Coates.

DELEGATE COATES: Thank you, sir. My question relates to line 90 through 91, which reads: However, an appropriation for a capitol project may be the subject of the referendum.

Did the committee consider the inability of various states to respond to the building needs of public education?

DELEGATE BRUNING: We didn't discuss it specifically in just to education. We did discuss essentially the use of the permissive "may" as opposed to must be or shall be subject to, shall be always subject to referendum. We left that open. I realize now that there is something of a conflict between that and finance and tax.

DELEGATE COATES: Then do I understand that you did

not consider the problem with respect to providing or meeting desirable school facilities?

DELEGATE BRUNING: For education, no. We didn't go into that detail.

DELEGATE COATES: You did not consider it. A second question, sir, relates to lines 122 through 123: Initiative and referendum powers may be exercised by the electors of local governments as provided by law.

Am I correct in the understanding that a subdivision of the state could enact laws?

DELEGATE BRUNING: If the section that creates the local governments allows them to create laws, I would think.

DELEGATE GRAHAM: May I say something on that? I think we who come from states know that we have county government and we have township government within the state, and those counties and the townships do have certain--have been granted certain chances for making certain laws and carrying them out. And that's what we were referring to here, at that. They can do what is listed here. We thought we would just say it so it would be known in the constitution that it was not taken from them. That's all.

DELEGATE JOHNSON: Remember, this is not debate.

This is just question and answer.

DELEGATE BRUNING: The word "may" is very important. We initially put in "should," and then we thought it was too harsh. So, we just brought up the idea so that if a local entity wanted to implement the same thing that the state was advocating, they could do so.

CHAIRMAN BALDWIN: This concludes the question-and-answer period on initiative and referendum. Delegate Johnson, you may proceed.

DELEGATE NAHIKIAN: Mr. Chairman, I'd like to ask a question.

CHAIRMAN BALDWIN: We had ten minutes, ma'am. We are moving the agenda.

DELEGATE NAHIKIAN: There is a very important question that needs to be addressed here that I would like to ask.

CHAIRMAN BALDWIN: When we get to it during the discussion, you may--

DELEGATE NAHIKIAN: I have not spoken the entire evening.

CHAIRMAN BALDWIN: You were out of the convention hall.

DELEGATE NAHIKIAN: That's because I was trying to

get your Xeroxing done.

CHAIRMAN BALDWIN: Delegate Johnson, will you please proceed.

DELEGATE JOHNSON: I move the adoption of section 1 of the article on initiative and referendum. The section is entitled "Right to Initiative and Referendum," lines 5 through 11, page 1 of 6.

DELEGATE JONES: Second.

CHAIRMAN BALDWIN: You move the adoption of the whole article?

DELEGATE JOHNSON: No, sir, section 1.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we adopt section 1 of the article on initiative and referendum. Are you ready for the discussion? Delegate Kameny.

DELEGATE KAMENY: Yes. I'd like to suggest a minor change. Let me see if I can get my pages in order here. It seems that on line 10 where you refer to the repeal--that the people reserve the right to adopt or repeal any act or part of any act, which is rather compelling language, which conflicts with page 8, line--page 5, line 88 and its vicinity, which provides certain exceptions to the referendum provision. Therefore, you don't want to say any

act because that's not really quite what you mean.

DELEGATE LOVE: Where is that section again, Frank?

DELEGATE KAMENY: It's page 5, line 88, plus or minus, that whole section (c), which provides exceptions. I'm not taking exception to the exceptions, but the language on line 10 that any act, is in contradiction to that. It admits of no exceptions. Therefore, Madam Chair, I would suggest as an amendment that we say simply--ameliorate the language and say simply: Repeal acts or parts of acts.

A DELEGATE: Second.

DELEGATE CORN: Substitute motion.

CHAIRMAN BALDWIN: Delegate Kameny, you are deleting--your motion was to delete?

DELEGATE KAMENY: Delete two "anys" on line 10 and change the two "act" to "acts."

DELEGATE CORN: Substitute motion.

CHAIRMAN BALDWIN: It has been moved and properly seconded to amend line 10 by deleting the two "anys" and adding "s" to the "acts." Discussion?

DELEGATE CORN: Substitute motion.

CHAIMRAN BALDWIN: Delegate Corn.

DELEGATE CORN: Except for the exceptions spelled

out in section 4(c), it seems to me from reading this you do mean any acts or any parts thereof.

CHAIRMAN BALDWIN: Delegate Corn, just state your substitute motion, please.

DELEGATE CORN: Therefore, I would move the substitute motion to leave the language in line 10 as it is and add the words "except as provided for in section 4(c)."

CHAIRMAN BALDWIN: Where would you add that to, at the end of the sentence on 11?

DELEGATE CORN: At the end of the repeal any act or part of any act, comma, except as provided in section 4(c). Oh, I guess it would be at the end of line 11. Repeal any act, or part of any act, passed by the legislature and enacted into law, comma, except those acts as provided in section 4(c). Or, instead of that in line 11, say: unless otherwise prohibited in this constitution.

CHAIRMAN BALDWIN: Delegate Corn, the secretary has had to change your substitute motion three times. Will you please get it together before you propose it to the body.

DELEGATE CORN: On line 11: unless otherwise provided in this constitution.

DELEGATE JOHNSON: Is that your only--in other words, leaving--

DELEGATE CORN: Leaving it as it is and just putting a comma after the last word in 11.

CHAIRMAN BALDWIN: Is there a second to Delegate Corn's substitute motion?

DELEGATE LOVE: Second.

CHAIRMAN BALDWIN: It has been moved and properly seconded that the substitute motion which would replace Delegate Kameny's primary amendment would read thusly: unless otherwise provided in this constitution. Discussion?

DELEGATE STREET: I have a question.

CHAIRMAN BALDWIN: Delegate Barnes.

DELEGATE BARNES: I'll pass till later.

CHAIRMAN BALDWIN: Delegate Street.

DELEGATE STREET: Point of information.

CHAIRMAN BALDWIN: Point of information.

DELEGATE STREET: Did I understand Mr. Kameny to suggest the removal of "any" from the text line 10?

CHAIRMAN BALDWIN: Yes. The primary amendment was to delete the two "anys" on line 10 and add "s" to act.

DELEGATE KAMENY: Pluralize the word "act."

DELEGATE STREET: Okay.

CHAIRMAN BALDWIN: Delegate Love.

DELEGATE LOVE: Delegate Johnson, is this

consistent with your intent?

DELEGATE JOHNSON: I think it is.

DELEGATE BRUNING: I think either is.

DELEGATE LOVE: What?

CHAIRMAN BALDWIN: He said either would be, either the primary amendment or the substitute motion would be consistent with their intent.

Any further discussion on the substitute motion? Delegate Barnes.

DELEGATE BARNES: I move the previous question.

A DELEGATE: Second.

CHAIRMAN BALDWIN: The previous question has been called for. Those in favor of the previous question, signify by saying, "Yes." [Response]

Opposed is "Nay." [Silence]

Abstentions? [No abstentions]

Previous question. The substitute motion reads: "unless otherwise provided in this constitution" would be at the end of line 11. Those in favor of the substitute motion, signify by saying, "Yes." [Response]

Opposed, "Nay." [Response]

We need a division. Yes, show of hands, please. [Show of hands]

SECRETARY COOPER: Eleven.

CHAIRMAN BALDWIN: Nay, show of hands, please. [Show of hands]

SECRETARY COOPER: Thirteen.

CHAIRMAN BALDWIN: Abstentions?

One.

SECRETARY COOPER: One.

DELEGATE SCHRAG: May we have a roll call, please?

DELEGATE CORN: Roll call.

CHAIRMAN BALDWIN: We understand you have a right, Delegate Schrag, but yesterday President Cassell told us exactly how much extra it costs.

DELEGATE SCHRAG: I would be satisfied with a recount of the hands, Mr. President.

CHAIRMAN BALDWIN: Thank you. A recount of the hands, please. Those in favor of the substitute motion, signify by a show of hands. [Show of hands]

SECRETARY COOPER: Tell them to keep their hands up.

CHAIRMAN BALDWIN: Keep your hands up, please.

SECRETARY COOPER: Nine.

CHAIRMAN BALDWIN: Opposed is "Nay." [Show of hands]

SECRETARY COOPER: Fourteen.

CHAIRMAN BALDWIN: Abstention?

SECRETARY COOPER: One.

CHAIRMAN BALDWIN: The motion has lost.

Now to the primary amendment, Delegate Kameny's amendment, which was to delete "any," which appears twice on line 10, and pluralize "act" in both cases. That is the amendment. Those in favor of the amendment, signify by saying, "Yes." [Response]

Opposed is "Nay." [Response]

Is it necessary for a division?

Abstention? [No abstentions]

Motion passes. That was the amendment.

DELEGATE LOVE: Mr. Chair.

CHAIRMAN BALDWIN: We have to read it now as it is amended so they can vote on that. Delegate Love.

DELEGATE LOVE: Part of the section--I'm going to ask for a ruling from the chair. I am going to move at some point that this section be placed in the legislative section as opposed to here. I wonder whether it is appropriate to move that now, the same wording, or wait until the legislative section comes up and move that it be included then.

CHAIRMAN BALDWIN: You may do it in either case. Once it has been fully adopted today, you may make your

motion, or you may wait until the legislative comes in. Either place would be appropriate.

DELEGATE LOVE: I'll wait.

DELEGATE JOHNSON: Are there other amendments to this section?

DELEGATE CORN: Could you read line 10 as it should be read?

DELEGATE JOHNSON: Line 10: repeal acts, or part of acts--I'll begin again. Repeal acts or parts of acts passed by the legislature, and.

CHAIRMAN BALDWIN: And enacted into law.

Are there other amendments to section 1? Are there other proposed amendments to section 1? Having heard none, we'll vote on section 1 as amended. Those in favor of adopting section 1 as amended, signify by saying, "Yes." [Response]

Opposed is "Nay." [Response]

Abstentions? [No abstentions]

Yes, has it. So, the section 1 has been adopted.

DELEGATE JOHNSON: Delegates, I move the adoption of section 2, Initiative Procedures, and I suggest that there are several parts to this section, that we adopt them letter by letter, if that's all right.

CHAIRMAN BALDWIN: Sure.

DELEGATE JOHNSON: So, I move the adoption of section 2(a).

SEVERAL DELEGATES: Second.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we adopt section 2(a). Delegate Johnson, is there a minority report to 2(a).

DELEGATE JOHNSON: No, sir, we have no other minority reports for any of our articles.

CHAIRMAN BALDWIN: Thank you. We are ready now for discussion on 2(a). Delegate Simmons.

DELEGATE SIMMONS: I move the previous question.

SEVERAL DELEGATES: Second.

CHAIRMAN BALDWIN: The previous question has been called for. Those in favor, signify by saying, "Yes." [Response]

Opposed is "Nay." [Silence]

We may, as you know, and in the future we will, unless there's some objection, once the previous question is called for, if there's general consent, we can just move right on.

Those in favor of adopting section 2(a), signify by saying, "Yes." [Response]

Opposed is "Nay." [Silence]

Abstention? [No abstentions]

2(a) has been adopted.

DELEGATE JOHNSON: I move the adoption of section 2(b).

DELEGATE KAMENY: Second.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we adopt section 2(b). Discussion? Delegate Simmons.

DELEGATE SIMMONS: Move the previous question.

A DELEGATE: Second.

CHAIRMAN BALDWIN: By consensus. Those in favor of the adoption of section 2(b), signify by saying, "Yes." [Response]

Opposed is "Nay." [Silence]

Abstention? [No abstentions]

Section 2(b) has been adopted.

DELEGATE JOHNSON: I move the adoption of section 2(c).

SEVERAL DELEGATES: Second.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we adopt section 2(c). Consensus?

DELEGATE SIMMONS: So moved.

CHAIRMAN BALDWIN: Section 2(c) has been adopted.

DELEGATE JOHNSON: I move the adoption of section 2(d).

A DELEGATE: Second.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we adopt section 2(d). Delegate Love.

DELEGATE LOVE: Mr. Chair, there are some time limitations. This applies only to initiatives and not referendums, am I correct?

DELEGATE JOHNSON: Correct.

CHAIRMAN BALDWIN: Has your question been answered, Delegate Love?

DELEGATE LOVE: Yes, thank you.

CHAIRMAN BALDWIN: Any other discussion on section 2(d)?

Delegate Simmons, so move?

DELEGATE SIMMONS: Yes.

CHAIRMAN BALDWIN: By consensus. There is no objection. Section 2(d) has been adopted.

DELEGATE JOHNSON: I move the adoption of section 2(e).

A DELEGATE: Second.

CHAIRMAN BALDWIN: It has been moved and properly

seconded that we adopt section 2(e). Delegate Moore.

DELEGATE T. MOORE: No, it was 2(f) that I wanted.

DELEGATE SIMMONS: I move the previous question.

CHAIRMAN BALDWIN: The previous question has been called for; we adopt section 2(e) by consensus.

DELEGATE JOHNSON: I move the adoption of section 2(f), page 3 of 6.

A DELEGATE: Second.

CHAIRMAN BALDWIN: The adoption of section 2(f) has been moved and seconded. Delegate Moore.

DELEGATE T. MOORE: I wanted on line 39, Mr. President, I wanted the two-thirds changed to a simple majority of over 50 percent of the legislative districts.

CHAIRMAN BALDWIN: Is that your motion?

DELEGATE T. MOORE: Yes, sir.

CHAIRMAN BALDWIN: Is there a second?

DELEGATE CORN: Second.

CHAIRMAN BALDWIN: It has been moved and properly seconded that two-thirds become a simple majority. Would you state it again for us, please, Delegate Moore.

DELEGATE T. MOORE: I move that we use a majority in lieu of the two-thirds. My rationale is that I don't think we need to make the initiative too hard, that is, to

get on the ballot by the people. And I believe two-thirds of the District is extreme.

CHAIRMAN BALDWIN: The amendment now reads as follows: provided that the respective percentage for each type of initiative must have been met in at least a simple majority of the legislative districts of the state.

Discussion? Delegate Simmons.

DELEGATE SIMMONS: I rise to speak against the change, the amendment of two-thirds to a majority. With all due respect to Colonel Moore, I would like to suggest that the history of initiative and its use in this country does not suggest to me that it is in the interest of either democracy or forward-moving embryonic state to have a majority as opposed to two-thirds. I think that behind the energy, the effort at deliberation and the years and history of experience that we've had with regard to any kind of acknowledgement of sovereignty of the people of the District of Columbia, we cannot afford to risk having it again returned to the Edwardian theory of looking back by making it easy for those opponents of freedom and liberty to rise against. I recommend that we vote against this amendment for those reasons.

CHAIRMAN BALDWIN: Delegate Johnson, I see many

hands from the committee. You may identify one to speak.

DELEGATE BRUNING: Yes. This was a matter of deep debate within the committee, and we fluctuated from having no requirement to across-the-board signature percentages, everywhere. Right now we currently stand--in the District though it's five-eighths--two-thirds was in the end something the committee itself could live with. I may personally favor, possibly favor, lower, two-thirds is a committee decision that I am quite willing to respect. So, I would stick with two-thirds.

DELEGATE JOHNSON: Delegate Graham and Delegate Garner wanted to speak.

CHAIRMAN BALDWIN: Delegate Graham.

DELEGATE GRAHAM: I do hope that you will defeat this motion. We discussed it at length, and we were thinking about those districts that may not be able to--would have a very difficult time or would be left out if you say a majority of the districts. For example, we would be left out if you're thinking in terms of 5 or 6, Ward 6 or Ward 7, something of that sort. But if you say two-thirds of the districts, you know you are going to get a majority of the registered voters to participate. And it is the responsibility of those who are presenting this to see that the

voters are educated so far as what's going on. And if you say less than that, then it means that some of us would not be included in whatever is going on. And there might be several popping up all over the place ever so often that would be useless.

CHAIRMAN BALDWIN: Delegate Garner.

DELEGATE GARNER: I also rise in opposition to the motion to make the distributional requirement only 50 percent. And I do so as one of the original proponents within the committee of a 50 percent distributional requirement. When I first heard of it, I thought 50 percent made a lot more sense. But we have to realize we're not talking about that much difference. Fifty percent is being proposed. We currently have five-eighths, which is 62 percent. And what the committee is proposing is 67 percent, again not that much difference. And the body has to look at the whole package. We don't want it to be too easy. We don't want it to be too difficult. We have a percentage requirement for the number of signatures. We have a distributional requirement throughout the state. We have a time period requirement. And all these things together, we think, give you a nice package, the appropriate amount of difficulty, for a proposal. I think two-thirds distributional requirement

makes a lot of sense, and I urge you to keep it and vote against the amendment on the floor.

CHAIRMAN BALDWIN: Are there others who wish to speak in support of the amendment? Delegate Nahikian.

DELEGATE NAHIKIAN: Yes. Could I ask the maker of the motion a question?

CHAIRMAN BALDWIN: Sure.

DELEGATE NAHIKIAN: Delegate Moore, in proposing the majority, the signatures would have to come from a majority of districts, what was your specific rationale in looking at that?

DELEGATE T. MOORE: My specific rationale on any initiative or any referendum, any initiative, I don't think it should be too difficult. I think it should be made easier for the people to get to the--I mean, put a place on the ballot and satisfy the people's desires. And that was my rationale behind it. I don't think we need to make anything that's going to encounter a lot of difficulties when it's in reference to initiative, referendum, recall, and the like.

DELEGATE NAHIKIAN: Had you thought about any geographic distribution in proposing the 50 percent? My point is this. Given the fact that the legislative districts will be very diverse, was a part of the reason why you

proposed the amendment based on analysis of the geographic distribution and concern about that?

DELEGATE T. MOORE: Well, I guess you could say partly. I don't know.

CHAIRMAN BALDWIN: Delegate Love.

DELEGATE LOVE: I'd like to speak in favor of this motion. I think those people who have spoken against it show a fear of the voters. All this does is put something on the ballot. When it comes to the election, the people will decide as they always do. By making it hard for things to go on the ballot, you're saying that you're afraid of what the voters might do. I'm not afraid of the voters, not afraid of them when this constitution comes up. And I'd like to support Delegate Moore's proposal for 50 percent.

CHAIRMAN BALDWIN: Delegate Harris.

DELEGATE HARRIS: I move the previous question, please, Mr. Chair.

CHAIRMAN BALDWIN: The previous question has been moved.

A DELEGATE: Second.

CHAIRMAN BALDWIN: Those in favor of the amended motion--I'm sorry--cutting off debate, signify by saying, "Yes." [Response]

Opposed is "Nay." [Response]

Abstention? [No abstentions]

Debate has been terminated.

Those in favor of the amendment inserting simple majority over two-thirds, signify by saying, "Yes." [Response]

Opposed? [Response]

Abstention? [One abstention]

The noes have it, and the amendment was lost.

Delegate Love.

DELEGATE LOVE: Mr. Chair, one of the problems we've always had with initiatives is the idea of special elections and the costs that are involved. Is it the intent of the committee in line 41 when they say next election--do they mean next regular election? Would it be in order to move that amendment? I'd just like some understanding because the voters get very tired of turning out all the time in the District. And I prefer to see it only come up when we have regular elections, which will be at least every two years.

DELEGATE BRUNING: The next election was exactly that, the next election. It can be a primary, it can be a general, it can be a special, anything that falls within that

120-day period.

DELEGATE LOVE: Could proponents of an initiative force an election?

DELEGATE GARNER: No, that's the point. If there's a special election for some other reason, the initiative could be put on the ballot then. But the initiative itself does not create the special election.

DELEGATE LOVE: Okay, thank you. Would the word "regular" cause problems here?

DELEGATE JOHNSON: We originally, if I recall, had language that specified all the possible--primary, regular, special. And we thought that that wasn't necessary. It's just the next election. For economy's sake, for the very reason that you gave.

CHAIRMAN BALDWIN: Are there other amendments to section 2(f)?

DELEGATE THOMAS: I move the question, Mr. Chairman.

CHAIRMAN BALDWIN: Those in favor of the adoption of section 2(f), signify by saying,"Yes." [Response]

Opposed is "Nay." [Silence]

Abstention? [No abstentions]

2(f) has been adopted.

DELEGATE JOHNSON: I move the adoption of section

2(g).

DELEGATE BARNES: Second.

CHAIRMAN BALDWIN: It has been moved and seconded that we adopt section 2(g). Discussion? Delegate Love.

DELEGATE LOVE: Just for discussion purposes, I'd like to move to delete that section. I'm not sure why you should give people a time limit to collect signatures.

DELEGATE NAHIKIAN: Second.

CHAIRMAN BALDWIN: It was seconded.

DELEGATE BRUNING: I think the thinking behind it--

DELEGATE JOHNSON: Wait a minute. Was there a second?

CHAIRMAN BALDWIN: It has been moved and properly seconded that we delete section 2(g).

DELEGATE BRUNING: I think the thinking behind that was if it's silent on this, it would probably be somethat that's promulgated either by the legislature or the Board of Elections and Ethics or whatever the equivalent would be. And, based on the history of initiatives and referendum in the District and based on I think the historical antagonism between initiatives and legislatures, that leaving that time period to the legislature or to the creation of a legislature could lead to time limits being

put on it that are arbitrarily shorter and impossible to meet. So, 180 days is a reasoned, best judgment on fairness. And it matches current law.

CHAIRMAN BALDWIN: Delegate Rothschild.

DELEGATE ROTHSCHILD: Just a question on that. Shall not be less than 180 days?

DELEGATE BRUNING: It shall be 180 days.

CHAIRMAN BALDWIN: It just says: shall be 180 days.

DELEGATE LOVE: I will withdraw that motion.

CHAIRMAN BALDWIN: The motion has been withdrawn.

Delegate Rothschild.

DELEGATE ROTHSCHILD: Yes, the circulation period, I'd like to amend it by saying: shall not be less than 180 days.

DELEGATE CORN: Second.

CHAIRMAN BALDWIN: It has been moved and properly seconded--

DELEGATE JOHNSON: Wait, was it seconded?

CHAIRMAN BALDWIN: It was seconded. It has been moved and properly seconded that the language shall read: shall not be less than 180 days.

Delegate Bruning.

DELEGATE BRUNING: Yes. A hundred and eighty days,

as written here, sets the outer limit. Obviously you can turn in petitions in 30 days or 60 days, and that would be a petition period. But by saying, "Shall not be less than 180 days" that would force people who had their signatures in within 60 days to wait another 120 days before they could file them.

DELEGATE JOHNSON: Read the whole thing, Delegate Rothschild, the whole thing.

DELEGATE ROTHSCHILD: Okay. The circulation period for an initiative measure petition shall be no less than 180 days after the proponents receive a title and summary from the secretary of state.

DELEGATE CORN: I am going to withdraw my second on that. I beg your pardon.

CHAIRMAN BALDWIN: There is no motion on the floor.

Mr. Rothschild. Mr. Rothschild, did you--

Mr. Rothschild, did you concur--

DELEGATE ROTHSCHILD: All right, I withdraw.

CHAIRMAN BALDWIN: Mr. Rothschild has withdrawn his amendment.

Any further discussion on 2(g)?

DELEGATE NAHIKIAN: I move the previous question.

SEVERAL DELEGATES: Second.

CHAIRMAN BALDWIN: The previous question has been called for. Those in favor, signify by saying, "Yes." [Response]

Opposed is "Nay." [Silence]

Abstention? [No abstentions]

Those in favor of adopting section 2(g), signify by saying, "Yes." [Response]

Opposed is "Nay." [Silence]

Abstention? [No abstentions]

Section 2(g) has been adopted.

DELEGATE JOHNSON: I now move, Delegate Baldwin, the adoption of section 2 of the article on initiative and referendum, Initiative Procedures.

A DELEGATE: Second.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we adopt section 2 with amendments, if any.

DELEGATE SIMMONS: I move the previous question.

SEVERAL DELEGATES: Second.

CHAIRMAN BALDWIN: Those in favor, signify by saying, "Yes." [Response]

Opposed is "Nay." [Silence]

CHAIRMAN BALDWIN: We will now move to adopt the section, section 2. Those in favor, say, "Yes." [Response]

Opposed is "Nay." [Silence]

Abstention? [No abstentions]

Thank you. Section 3.

DELEGATE JOHNSON: I move the adoption of section 3, Referendum Procedures, section by section, starting with section (a).

SEVERAL DELEGATES: Second.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we adopt section 3(a).

DELEGATE SIMMONS: I move the previous question.

SEVERAL DELEGATES: Second.

CHAIRMAN BALDWIN: The previous question by consensus. Those in favor of adopting section 3(a), signify by saying, "Yes." [Response]

Opposed is "Nay." [Silence]

Abstention? [No abstentions]

DELEGATE JOHNSON: I move the adoption of section (b).

DELEGATE BARNES: Second.

CHAIRMAN BALDWIN: The adoption of section (b) has been seconded. Discussion? Delegate Love.

DELEGATE LOVE: Does section (b) allow the law to stay into effect until a vote takes place, or is there

another section that deals with this?

DELEGATE BRUNING: The way the procedure is laid out, a law doesn't go into effect for 90 days; and within that 90-day period you have to file a referendum on it. So, in effect, if you file a referendum that meets all the requirements, the law never goes into effect until it actually goes to the vote of the people.

DELEGATE LOVE: Where is that stated?

DELEGATE BRUNING: Line 92.

DELEGATE LOVE: Okay, thank you.

CHAIRMAN BALDWIN: Further discussion on section (b)? Section 3(b). Delegate Corn.

DELEGATE CORN: Yes. Line 50. Change 90 to 180.

SECRETARY COOPER: Second.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we delete 90 and insert 180. Discussion?

DELEGATE CORN: This is line 50. May I speak to my motion?

CHAIRMAN BALDWIN: Yes, you may.

DELEGATE CORN: There are several things here. First of all, it will be more in accordance with the procedures outlined in section (g) above, section 2(g), where there it provides 180 days. And, second of all, it seems to

me that to educate the public as to what the law will be, what the section of it is that's objectionable, why it's objectionable, how it will affect them, and to put together an organization to do this in 90 days is unfeasible. If your purpose is to make it impossible to have a referendum on a law or a part thereof, then I'd just omit this entire section. But if your purpose is to be able to give the citizens of the District the opportunity to stop a law or a section, then give them the proper amount of time to do it in. And 180 days is a reasonable and feasible amount of time.

CHAIRMAN BALDWIN: Delegate Bruning.

DELEGATE BRUNING: Almost every referendum section in almost any state provides for 90 days after the adjournment of the legislature to file. Ninety days is a standard procedure. I think it works on two assumptions. One is that the law that's under challenge is more than likely going to be a subject of intense debate already before it's passed. We're talking about things like the convention center probably, like the inheritance tax. These are things that are not going to take a great deal of education probably.

The second thing is that there is not the intention of putting these laws forever on hold because if you have 180

days to file the initiative, then you have to say the law--to make sense, you would have to say the law doesn't go into effect for 180 days. Otherwise you would be faced with the predicament of the law going into effect for 90 days after it goes--it doesn't go into effect for 90 days and 90 days later it goes into effect. Then you file a referendum at 180. Then you'd stop the law. So, you've got a law going in and out of existence. This is a very clean, straightforward way. The law doesn't go into effect for 90 days. And it's frozen there for 90 days. You file your referendum over that 90-day period. It doesn't go into effect until the voters vote on it. The other way leads to a complete jumble. Ninety days is not an impossible task; nor, based on the requirements in terms of signatures and distribution, is it an impossible task.

CHAIRMAN BALDWIN: Delegate Love.

DELEGATE LOVE: I'd like to ask the committee: If somebody wants to repeal a law through the referendum and doesn't get their petitions in till, say, a hundred days, have they lost the right to repeal the law? Or can an initiative repeal a law?

DELEGATE BRUNING: An initiative can--

DELEGATE LOVE: Your definition of initiative does

not allow--it says: proposed statutes and amendments. Does that mean you could propose to repeal the law as an initiative?

DELEGATE C. MASON: A statute can repeal an existing law or part of an existing law. If the people object to something which the legislature has passed and has been signed by the governor, they have two possibilities. One, to bring it by an initiative, which gives them a 90-day limit. But it does not go into effect until after the vote. In other words, it holds it off for 90 days up until the petition is filed, then for whatever extra time it is before it's acted on on the ballot. If the people who object to it do not think they can get those signatures in 90 days, they could propose an initiative that would repeal it. In that case, it would go into effect at the end of the 90 days; but at some later time, when they file their initiative petition, then after that the people would vote on the matter. And if the people who opposed one, why then at that point the law would be repealed. But the initiative and the referendum differ in this respect. The referendum keeps the law from going into effect while this is going on, but provides only 90 days to get the signatures. The referendum method--a referendum which is passing a law to repeal--would

not keep it from going into effect.

There is a slightly different situation on emergency laws which I have not mentioned. But we'll get to that later.

DELEGATE LOVE: Is this the committee's agreement on the interpretation that will be part of the legislative history? Could you say, "Yes," Madam Chair?--so, it's clear, if anybody has to go to court, exactly what you mean.

DELEGATE JOHNSON: This committee is 202 percent unified on exactly what Delegate Mason and Delegate Bruning have explained to you.

CHAIRMAN BALDWIN: Further discussion?

DELEGATE BARNES: Call the question.

A DELEGATE: Second.

CHAIRMAN BALDWIN: The question has been called for. Those in favor of adopting section--

DELEGATE CORN: Excuse me, point of order, Mr. Chair. There is an amendment on the floor. It has been properly seconded. I request that you call for a vote on that amendment.

CHAIRMAN BALDWIN: You don't have to do all of that. Thank you for calling it to the chair's attention. We're voting on the primary amendment to delete 90 days and

insert 180 days. Those in favor of the deletion, signify by saying, "Yes." [Response]

Those opposed, "Nay." [Response]

Abstention? [No abstentions]

The amendment was lost.

DELEGATE GARNER: Call the question.

CHAIRMAN BALDWIN: The question has been called for.

SEVERAL DELEGATES: Second.

CHAIRMAN BALDWIN: Those in favor of termination of debate, signify by saying, "Yes." [Response]

Opposed is "Nay." [Silence]

So ordered. We are back to the original motion, the adoption of section 3(b). Those in favor of adopting section 3(b), signify by saying, "yes." [Response]

Opposed is "Nay." [Silence]

Abstention? [No abstentions]

Section 3(b) has been adopted.

DELEGATE JOHNSON: I move the adoption of section 3(c), page 4 of 6, beginning with line 58 of the article.

SEVERAL DELEGATES: Second.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we adopt section 3(c). Discussion?

Is there discussion? Delegate Simmons.

DELEGATE SIMMONS: Move the previous question.

A DELEGATE: Second.

CHAIRMAN BALDWIN: The previous question by consensus. Those in favor of adopting section 3(c), signify by saying, "Yes." [Response]

Opposed is "Nay." [Silence]

Abstention? [No abstentions]

Section 3(c) has been adopted.

Section 4.

DELEGATE JOHNSON: I move the adoption of section 3.

A DELEGATE: Second.

CHAIRMAN BALDWIN: The adoption of section 3 has been seconded. Those in favor, signify by saying, "Yes." [Response]

Opposed is "Nay." [Silence]

Abstention? [No abstentions]

Section 3 has been adopted.

DELEGATE JOHNSON: I move, delegates, the adoption of section 4(a). This is under Procedures for Legislation Taking Effect.

SEVERAL DELEGATES: Second.

CHAIRMAN BALDWIN: It has been moved and seconded

that we adopt section 4(a). Discussion?

Delegate Simmons and then Delegate Oulahan.

DELEGATE SIMMONS: Oulahan may speak first.

CHAIRMAN BALDWIN: Oulahan.

DELEGATE OULAHAN: Delegate Johnson, why the difference of 30 days with respect to an initiative measure and immediate effectiveness after a referendum?

DELEGATE BRUNING: I think our rationale was that 30 days would leave open the possibility if there was transition work or preparatory work needed to handle the law coming into effect. I think the immediately part, in terms of referendum, was essentially there is a law that the voters of the state had decided was not a law that they were happy with or a law that maybe they are violently opposed to, and that a vote would then immediately cancel the effects of that law. It's essentially repealing a law that can be a bad law immediately.

DELEGATE OULAHAN: But my question then--ordinarily statutes don't go into effect until some time period after they're enacted even by the legislature. And unless you've got a time period in here where the referendum is involved, you're going to have a law go into effect in 48 hours or something like that without a time period to phase out what

might have already been underway. I wonder if you might consider a friendly amendment that we use 30 days for both. I have not made a motion. I have merely put it up for discussion.

DELEGATE BRUNING: I would want to check with the committee. I think the chairperson would want to talk with the committee.

[Pause for committee members to confer.]

CHAIRMAN BALDWIN: The section he was referring to when he said, "Both," is it previous action we have taken or some section in the future? Delegate Johnson.

DELEGATE JOHNSON: Just one moment. I am conferring with the committee.

CHAIRMAN BALDWIN: What do you think of the phrase "both"? What was he referring to other than 4(a)?

DELEGATE JOHNSON: He was referring to the reference for taking effective vote in the section on referendum.

CHAIRMAN BALDWIN: That's past action. Delegate Oulahan, if it's past action, the committee would not be allowed to change it at this point because I was just informed that that's a substantive matter. So, that's out of the committee's hands.

DELEGATE OULAHAN: Then I would move an amendment, Mr. Chairman, that lines 66 through 71 be revised to read as follows: An initiative measure approved by a majority of the votes thereon, as a result of a referendum election, takes effect 30 days after the date of the official declaration of the vote by the secretary of state unless the measure provides otherwise.

CHAIRMAN BALDWIN: Mr. Secretary, did you get the--

SECRETARY COOPER: Yes. I got it.

CHAIRMAN BALDWIN: Will the secretary read the amendment, please.

SECRETARY COOPER: The amendment would change section 4(a) to read as follows: An initiative measure approved by a majority of the votes thereon and the result of a referendum vote takes effect 30 days after the date of the official declaration of the vote by the secretary of state unless the measure provides otherwise.

CHAIRMAN BALDWIN: It is the chair's interpretation--and we probably need to discuss this--if he's referring to referendum--and I'm assuming he's referring to past action, action that this body has adopted, he is not--

DELEGATE JOHNSON: No, it's all right.

CHAIRMAN BALDWIN: Okay, committee, are you sure of

that?

DELEGATE BRUNING: Yes.

CHAIRMAN BALDWIN: Okay, then, it's in order.

DELEGATE JOHNSON: Delegate Mason had a comment.

DELEGATE C. MASON: I should like to ask the maker of the motion whether he intends this to mean that the result of the referendum, whether it is yes or no, doesn't go into effect for 30 days. In the case of a piece of legislation, passed by the legislature, signed by governor, there is a 90-day period when it doesn't go into effect and during which time people can file referendum petitions. If somebody files a referendum petition, then there is a further delay while the election is being held. Finally the voters vote that they want the law to go into effect, they don't want to stop it. If that is the result of the voters' action, does the maker of the motion intend that the result of the voters' action in sustaining what the legislature and the governor have done should hold the law up for another 30 days?

DELEGATE OULAHAN: Mr. Chairman, I didn't mean to do that because obviously if the referendum sustains the legislature, there isn't anything to take the place of the legislation. All I was thinking of is that in the case of a referendum and in the case of an initiative, there ought to

be a time period before the new legislation goes into effect. Otherwise you might have some discombobulation or something else. It seemed to me that's a much more orderly process to take.

CHAIRMAN BALDWIN: Do you understand the intent of the amendment? Are there further questions regarding the amendment? Delegate Coates.

DELEGATE COATES: I do understand the intent, sir, but does this section provide that the law which is the subject of the referendum--well, does the filing of a referendum extend the date at which the law goes into effect to extend beyond the 90 days?

CHAIRMAN BALDWIN: Delegate Johnson, can you answer that question?

DELEGATE JOHNSON: It could.

Delegate Bruning, did you hear the question?

DELEGATE BRUNING: I'm sorry, I missed it.

DELEGATE COATES: Does the filing of a referendum meeting the criteria imposed here suspend the effective date of 90 days from that law's enactment?

DELEGATE BRUNING: The law does not go into effect for 90 days.

DELEGATE COATES: That's correct.

DELEGATE BRUNING: The filing of a referendum within that 90-day period freezes the law until there's a vote on it of the electorate as long as it is within the 90-day period.

CHAIRMAN BALDWIN: Is there further discussion?

Delegate Coates?

DELEGATE COATES: Thank you. Thank you.

CHAIRMAN BALDWIN: Those in favor of the Oulahan amendment, signify by saying, "Yes." [Response]

DELEGATE KAMENY: State the amendment again, please.

CHAIRMAN BALDWIN: Mr. Secretary, would you state the amendment.

SECRETARY COOPER: Okay. The amendment would insert on line 67 "and the result of a referendum vote," preceding the word "takes." So, the section as amended would read: An initiative measure approved by a majority of the votes thereon and the result of a referendum vote takes effect 30 days after the date of the official declaration of the vote by the secretary of state unless the measures provided otherwise.

DELEGATE SIMMONS: I'm sorry, Mr. President, I failed to get the insertion.

CHAIRMAN BALDWIN: The insertion is on line 67. Before "takes" you add "and the results of a referendum vote."

DELEGATE CORN: Results in the plural?

CHAIRMAN BALDWIN: Result of a referendum vote.

DELEGATE JOHNSON: Result.

CHAIRMAN BALDWIN: Takes effect.

DELEGATE SIMMONS: Okay, thank you.

CHAIRMAN BALDWIN: Those in favor of the amendment, signify by saying, "Yes." [Response]

Opposed is "Nay." [Response]

A division, please.

Those in favor of the vote, raise your hand. [Show of hands]

SECRETARY COOPER: Eight.

CHAIRMAN BALDWIN: Those in opposition? [Show of hands]

SECRETARY COOPER: Sixteen.

CHAIRMAN BALDWIN: Abstention?

SECRETARY COOPER: Two.

CHAIRMAN BALDWIN: The motion is lost, and we revert back to the original motion. The amendment was lost, and we revert back to the original motion. Delegate Barnes.

DELEGATE BARNES: I move the previous question.

CHAIRMAN BALDWIN: The previous question has been called for.

A DELEGATE: Second.

CHAIRMAN BALDWIN: And seconded. Those in favor of the previous question, signify by saying, "Yes." [Response]

Opposed is "Nay." [Silence]

Abstentions? [No abstentions]

We're now voting on the original motion, section 4(a). Those in favor of the adoption of section 4(a), signify by saying, "Yes." [Response]

Opposed is "Nay." [Response]

Abstention? [No abstentions]

Section 4(a) has been adopted.

DELEGATE JOHNSON: Delegates, I move the adoption of section 4(b).

SEVERAL DELEGATES: Second.

CHAIRMAN BALDWIN: It has been moved and seconded that we adopt section 4(b). Discussion? Delegate Love and Delegate Oulahan.

DELEGATE LOVE: Mr. Chair, this is covering material that is covered in the legislative report and covers

it in a way quite different from the legislative proposal. Therefore, I'd like to move to delete everything except a slightly revised first sentence, which would say: No law passed by the legislature shall take effect earlier than 90 days unless otherwise provided herein--and delete the rest of the section because it really properly belongs in the legislative section. It deals with emergency legislation.

A DELEGATE: Second.

CHAIRMAN BALDWIN: It has been moved and properly seconded that--will you read his amendment, his deletion.

SECRETARY COOPER: Yes. His amendment would insert on line 73, following the word "days," the following language: Unless otherwise provided herein, period. So that the new section would read: No law passed by the legislature shall take effect earlier than 90 days unless otherwise provided herein--and would strike the rest.

CHAIRMAN BALDWIN: Discussion? Delegate Oulahan, Schrag.

DELEGATE OULAHAN: Mr. Chairman, could I come forward on this?

CHAIRMAN BALDWIN: Sure.

[Delegate speaks from front lectern.]

DELEGATE OULAHAN: Mr. Chairman, I speak in support

of the motion made by Delegate Love, and I speak in support of his motion based on practical experience before the City Council. By putting in subsection (b) this provision for emergency legislation you're going to get the new legislature discombobulated just like the present City Council has been with its emergency legislation measures, which the Court of Appeals has, in a decision which I can't remember the date, said that they could only do it once, and if it's utilized more than once, that was a violation of the Home Rule Act. What you're doing here is setting up a procedure which in practically every case there's going to be a fight on whether or not it is emergency legislation or regular legislation. I think you are creating a very bad situation for a new legislature. Thank you.

CHAIRMAN BALDWIN: Would one member of the committee respond? Would one member of the committee respond?

DELEGATE JONES: Point of order, Mr. Chairman.

CHAIRMAN BALDWIN: Would you state your point of order, please.

DELEGATE JONES: Could Delegate Oulahan please define "discombobulation"? Could you please define that, Delegate Oulahan?

DELEGATE OULAHAN: Pardon?

CHAIRMAN BALDWIN: Just explain the terminology you used, whatever it was.

DELEGATE OULAHAN: "Discombobulation" is a 50-cent word for a lot of trouble.

CHAIRMAN BALDWIN: Thank you. Delegate Schrag.

DELEGATE JOHNSON: Delegate Mason.

DELEGATE C. MASON: I would point out the term "emergency legislation" here is totally unrelated to the term "emergency legislation" in the charter. The charter provides that legislation can be passed by the council without some of the formalities, most of which includes the waiting period on Capitol Hill. We'll no longer be involved with it as a state. And when they omit that waiting period, the emergency legislation lasts only 90 days. This use of the term "emergency legislation" is totally unrelated to that. This legislation passed by the legislature is permanent legislation. It will last until it's repealed, which could be in 50 years, a hundred years. The term "emergency" has only one effect on this legislation, and that is that it goes into effect immediately after the governor signs it.

In other words, there's nothing different in this legislation except that it is urgent, and the legislature by

a two-thirds vote, has said it should go into effect immediately. It is still subject to referendum. The only difference is that a non-emergency piece of legislation is suspended until the referendum is over. An emergency piece goes into effect right away, as soon as the governor signs it, and stays in effect unless the people six months later or whenever the election is held say we want to kill it, in which case it then vanishes from the books. The procedure outlined here is copied directly out of the Massachusetts constitution, and I believe Ohio is the same. It has worked for many years in Massachusetts, which is one of the earliest states to have a referendum. I have never heard any complaint in Massachusetts. And this is absolutely identical to that. But we should not confuse the term "emergency legislation" as used in this constitution with an entirely different use of that term in the Home Rule Charter which has to do with temporary pieces that only last 90 days.

DELEGATE LOVE: Point of order, Mr. Chair.

CHAIRMAN BALDWIN: Your point of order is?

DELEGATE LOVE: My intention here was not to get rid of emergency legislation. I favor it. All my point was to talk about it in the proper section, which is legislative. Neither of the two speakers that have previously spoken

addressed my motion and the purpose of my motion. Thank you.

CHAIRMAN BALDWIN: Delegate Schrag.

DELEGATE SCHRAG: Mr. President, I speak in favor Delegate Love's amendment for an entirely different reason than Mr. Oulahan's reason. And that is because it is completely inconsistent with the provision of the article on the legislature, section 16 of the article on the legislature, which we are going to be debating in a couple of days. The article--that section also provides for a delay in the effective date of legislation. And it also provides for a way of overriding that delay in the case of emergencies. But unlike the provision of the referendum article here, instead of having the legislature make its own determination of when an emergency exists, the legislature committee determined to require an independent check on the decision of the legislature that this feature could be overridden, and that is there is a provision for emergency legislation being adopted after certification by the governor that prompt legislative action precluding a lapse of time, as described above, is essential. And that section also provides for delays in publication of legislation automatically unless otherwise stipulated in the law. So, it is a quite different scheme, and I think it deserves to be debated in

the context of the whole rather elaborate plan that the legislature committee has devised for the rules governing the enactment of legislation. I think that by adopting the Love amendment, what we will do--it certainly would be my intention--and hope that we will do would be to defer this debate for a couple of days and then look very closely at the system that is devised for the effective date of the legislation in the legislature article.

One other point, and that is it might be said in favor of the article that appears here that a long delay is a good idea because you don't want laws starting to go into effect before the voters have had a chance to start up a referendum petition on it. I'd just like to point out to the delegates that that cuts both ways. That is, let's say the legislature passes a very popular act. Let's say, for example, an act providing for greater social benefits to the population. And a group of conservatives who do not want to see this act passed know that they don't have the votes to defeat it in a referendum, but they do have enough people to get signatures against it. This is a way that they can stop that act going into effect while they wait for a year for the next election to come around, just by filing, even though they don't have the support of a majority of the

voters. So, this is neither a liberal nor a conservative provision. It just is a provision that allows a minority to stop the will of the majority for a while. And I think we ought to have some question; at least we ought to have some debate. I'm not sure whether that's a good or bad idea. I think we ought to think hard about it before we approve the section.

CHAIRMAN BALDWIN: Will the committee respond.

DELEGATE GARNER: Proponents of this measure insist on discussing something that hasn't been proposed, Delegate Schrag. The maker of the motion, Mr. Love, provides for a 90-day delay. His motion has nothing to do with whether delays will be 90 days or not. He provides for that. What his concern is, by his own words, is the definition of emergency legislation. He believes, as you've stated initially, that the concern is: How do you define emergency legislation? If you allow the legislature or the governor to define emergency legislation by a simple majority route, the way they will do it is the way which will prevent referendum. Legislatures and governors do not like initiatives and referendums. It takes authority away from them. If you want to make sure that something really is an emergency, you need, as the committee proposed, some sort of

extraordinary majority of the legislature to say this in fact is an emergency. If it's going to be proposed later that it's only the word of the governor, the governor who must sign the bill to go into law anyway, then it's a simple procedure following traditional legislative routes. Our provision for emergency requires an extraordinary majority. That is the difference. This is the place to put it, in the article on referendum, and it's a provision that ought to be adopted.

CHAIRMAN BALDWIN: Further discussion? Delegate Terrell.

DELEGATE TERRELL: Mr. Vice President, I wanted to point out to members of the convention that the legislative branch committee has spent a lot of hours and time on this particular issue. And, therefore, I am moving that we table this issue until we deal with it as part of the article submitted by the legislative branch committee.

DELEGATE SCHRAG: Second.

CHAIRMAN BALDWIN: It has been moved and seconded that we table just the amendment only, we table the Love amendment.

DELEGATE TERRELL: The entire section, section 4(b).

DELEGATE BARNES: Point of clarification.

CHAIRMAN BALDWIN: Yes, Delegate Barnes.

DELEGATE BARNES: I think that Delegate Terrell would like to postpone the consideration of the section and not table it. There is a difference.

CHAIRMAN BALDWIN: But he also should clear up whether he means postponing consideration of the amendment or the whole section, I mean, (b).

DELEGATE TERRELL: Right.

CHAIRMAN BALDWIN: 4(b).

DELEGATE TERRELL: Right. That's what I'm saying.

CHAIRMAN BALDWIN: Which one of those are you saying?

DELEGATE TERRELL: To postpone consideration of it until it is taken up with the article from the legislative committee.

CHAIRMAN BALDWIN: Of the amendment or (b) in its entirety?

DELEGATE TERRELL: Of (b) in its entirety, that we take that up with the article as presented by the legislative branch committee.

DELEGATE GARNER: Point of order, Mr. Chairman.

CHAIRMAN BALDWIN: I think before the chair rules on

this, we need some discussion from the delegates because what you are saying, you want to table the whole section, not the proposed amendment. Delegate Garner.

DELEGATE GARNER: I believe we can solve--

DELEGATE CORN: Point of order. Point of order. On motion to table there is no discussion.

CHAIRMAN BALDWIN: You may proceed, Delegate Garner.

DELEGATE GARNER: Thank you. The issue on the floor is a ruling from the chair which may be debated. I think we can solve the problem if--Mr. Terrell, we can solve the problem if we vote on the Love amendment. If the section is still on the floor unamended, then the motion to table would be appropriate.

DELEGATE TERRELL: That is not a motion to table; it's a motion to postpone consideration.

DELEGATE GARNER: Mr. Chair, I would urge you to rule that the motion that's on the floor is a motion by Delegate Love. If Mr. Terrell wishes to table that motion, he may. But if he wishes to postpone, table, or whatever the entire section, he must wait until that motion is on the floor. That's what I would urge you to rule. Thank you.

CHAIRMAN BALDWIN: Delegate Schrag.